

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Access Charge Reform

Price Cap Performance Review  
for Local Exchange Carriers

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CC Docket No. 96-262

CC Docket No. 94-1

To: The Commission

**REPLY OF THE AMERICAN PETROLEUM INSTITUTE  
IN SUPPORT OF AT&T'S PETITION FOR RECONSIDERATION**

The American Petroleum Institute (API), by its undersigned attorneys, hereby respectfully submits this Reply in support of the Petition for Reconsideration filed AT&T Corporation (AT&T) in response to the *Fourth Report and Order* in CC Docket No. 94-1 and *Second Report and Order* in CC Docket No. 96-262, released May 21, 1997, FCC 97-159 (hereinafter *the X-Factor Order*).<sup>1</sup>

API agrees with AT&T that the Commission has made commendable progress in improving the price cap plan for regulating the interstate access services furnished by incumbent local exchange carriers. Adopting AT&T's recommendations, however, would make that plan even more effective and reliable.

<sup>1</sup> Notice of filing of these Petitions for Reconsideration was published in the Federal Register on August 1, 1997 (62 Fed.Reg.41386-87).

**I. AT&T'S RECOMMENDATIONS SHOULD BE ADOPTED IN THEIR ENTIRETY**

To ensure a more effective and reliable price cap system, AT&T urges reconsideration of three matters. AT&T advocates: (1) measuring LEC productivity on the basis of interstate-only data; (2) reinstating the sharing requirements of the price cap plan with a sharing threshold, if the low-end adjustment is retained; and (3) applying the revised X-Factor to price cap indices (PCIs) for the 1995 tariff year. The Commission should adopt each of these recommendations.

**A. The Record Supports An X-Factor Calculated On The Basis of Interstate-Only Data**

As the AT&T Petition persuasively demonstrates, ample record evidence exists to demonstrate that the rate of productivity growth for the LECs' interstate services is much higher than the rate of productivity growth for their "total company" services, which include local and intrastate services in addition to interstate services.<sup>2</sup> AT&T also demonstrates that ample record evidence establishes that a total company calculation generates a pronounced downward bias in the X-Factor. Nonetheless, the Commission adopted a "total company" calculation because, incredibly, it found "no basis in the record

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<sup>2</sup> In its Petition for Reconsideration, the Ad Hoc Telecommunications Users Committee (Ad Hoc) contends that the Commission acted in an arbitrary and capricious manner in giving no weight to the two studies that Economics and Technology, Inc. prepared for Ad Hoc and that Ad Hoc submitted in this proceeding.

for making an adjustment to the X-Factor" to reflect the differences between interstate and total company productivity.<sup>3</sup>

Like those Commission actions recently vacated and remanded by the United States Court of Appeal (D.C. Circuit), this disregard of record evidence appears to be arbitrary and capricious and should be reconsidered.<sup>4</sup> Failure to reconsider means that long-distance consumers and interexchange carriers will continue paying inflated access rates, since the X-Factor will have been set at least two percentage points too low.<sup>5</sup>

**B. If The Low-End Adjustment Is Retained, Then High-End Sharing Should Be Reinstated**

AT&T also takes issue with the Commission's cursory decision to retain the low-end adjustment mechanism while eliminating sharing obligations applicable to those

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<sup>3</sup> *X-Factor Order* at ¶ 110. AT&T correctly observes that the "presumed difficulty of 'quantifying' [the difference between the two measures] does not justify reliance on an inherently incorrect procedure that is bound to give the wrong answer." AT&T Petition at 8-9.

<sup>4</sup> In its July, 1997 opinion vacating and remanding portions of the Commission's *Report and Order* in CC Docket No. 96-128 and CC Docket No. 91-35, the United States Court of Appeals (D.C. Circuit) characterized as the "epitom[e of] arbitrary and capricious decisionmaking" the Commission's summary rejection of arguments that its default payphone compensation rate was too high: "The agency's order on *Reconsideration* at least recognizes that some parties had argued that the costs of coin calls are not 'similar' to those of 800 and access code calls; but the FCC then dismissed the argument with two words - 'We disagree' - and never provided any reasons for its 'disagreement.' The FCC's *ipse dixit* conclusion, coupled with its failure to respond to contrary arguments resting on solid data, epitomizes arbitrary and capricious decisionmaking." *Illinois Public Telecommunications Ass'n v. FCC*, No. 96-1394, slip op. at 15 (D.C. Cir. July 1, 1997) (citations omitted).

<sup>5</sup> According to AT&T, the magnitude of the adjustment to the X-Factor estimates required to account for use of total company data ranges from 1.9 to 2.8 percentage points, while Ad Hoc's consultants estimate an adjustment of 2.8 percentage points.

price cap carriers performing at the high-end. This decision ensures that consumers pay for the failings of inefficient ILECs but are foreclosed from sharing in the profits generated by efficient ILECs.

Competitive markets do not reward inefficient players. Neither should the Commission, which has attempted with its price cap regulation to emulate conditions encountered in competitive markets. If the Commission chooses to retain a low-end adjustment for price cap LECs experiencing deficient rate-of-return levels, then principles of regulatory parity demand that it should reinstate sharing obligations on those price cap LECs that are earning at rate-of-return levels that are too high.

**C. The Revised X-Factor Should Be Applied To 1995 Tariff Filings**

Finally, AT&T opposes the application of the revised X-Factor only to PCIs for the 1996 tariff year, a decision that it estimates "understates the LECs' current year access tariff reductions by approximately \$368 million."<sup>6</sup> Failing to apply the revised X-Factor to 1995 tariff filings penalizes consumers for regulatory delay and effectively rewards LEC tactics that prolong the process.

**WHEREFORE, THE PREMISES CONSIDERED,** the American Petroleum Institute respectfully urges the Federal Communications Commission to improve the price cap plan for regulating the interstate access services furnished by incumbent local

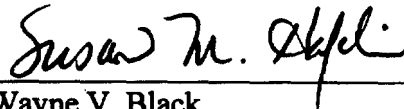
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<sup>6</sup> AT&T Petition at 18; *see also* Attachment A.

exchange carriers by granting in its entirety AT&T's Petition for Reconsideration of the  
*X-Factor Order*.

Respectfully submitted,

**AMERICAN PETROLEUM INSTITUTE**

A handwritten signature in cursive script, reading "Susan M. Hafeli", is written over a horizontal line.

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